No. 88-2140

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In The

Supreme Court of the United States

October Term , 1988

GLEN OSWIN HANCOCK

"Petitioner"

v.

City of Davenport
An Iowa Municipal Corp.,

ET AL.

"Respondent"

PETITION FOR WRIT OF CERTIORARI TO THE IOWA COURT OF APPEALS

—

GLEN O. HANCOCK
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QUESTIONS PRESENTED

[A] Whether established violations of constitutional rights that result in a taking, illegally enacted with a preponderance of conspiritorial evidence, requires full compensation of valuation attributed and accrued to a National Historic Landmark, conjoined to a sitting President of the United States?

[B] Whether a totality of the circumstances review of a civil case, with allegations of community prejudice, must require at the trial stage, procedural protective measures analogous to a criminal prosecution in the fielding of an impartial jury, and if safeguards against attorney default/ impropriety must submit to a similar test?

[C] Whether a defendant city, which is a county seat, can draw upon local taxpayers for jury empanelment, when the issues litigated are portrayed with contrived negativity by impacted conflicting and powerful special interests (media), and the `physical' presence of a large and misperceived
controversy impacts and infects the jury pool personally and directly?

[D] Whether a sitting President's former Home and archeologically irreplaceable Historic Landmark, privately owned, adjacent to a major defense facility, transcends vested
rights through the administrative empowerment of Congressional and Executive Branch environmental intent, will the State, a county or a city, in complying

with and by virtue of the enablement of a municipal ordinance that effects an action repugnant to that intent, be liable for damages, and will the Federal government spiritually be enjoined in that action, requiring notice by the moving [in this case the city] party ?

[E] Is the probability of Executive Branch `recognition' subject to judicial review of the `nature' of the recognition plausibly present in a case that possesses politically sensitive and national security ramifications?

[F] Whether federalistic comity considerations will grants the police power [building inspector] or the local judiciate,the power and the right, to supplant ' federal intent in nationally significant environmental matters, either by inadequate proficiency, or procedural abuse,[inadequate discovery/misplaced jurisdiction]?

The list of Parties in this suit:

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[1] City of Davenport, an Iowa Municipal Corporation, and Alderman Roger Blecher, Alderman Florian Keen, Alderman Kenneth Welzenbach, Alderman Donald Costello, Alderman John Haldeman, Alderman Karl Rhomberg, Alderman Larry d'Autermeont, Alderman Robert Bina, Bruce Romer, James Conway, and Phillip Testa, Respondants.

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REPORT OF OPINIONS BELOW

Hancock v City of Davenport 392 NW2d 472

Hancock v City of Davenport ____ NW2d___

(Iowa App. 1988) [app.1-15]

JURISDICTION

The order of the Iowa Supreme Court denying Application for Further Review was entered March 3, 1989 regarding Scott County District Court case number 70078 and Iowa Supreme Court number 87-01022.(app.20,21) A Procedendo was entered March 10, 1989 and Pro Se Petitioner files this Writ of Certiorari timely pursuant to 28 USC 2101 (c) and Supreme Court Rule 20 (4). The jurisdiction of this court rests on 28 U.S.C. 1257 (2) & (3).

STATEMENT OF THE CASE:

Petitioner pursuant to section 1983 Civil rights action, sought damages[2] for established due process violations. (see Hancock v City Council of Davenport 392

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[2] Petitioner appealed to the state capital appellate court, and the judgement was affirmed.(app:1-15) Pursuant to federally mandated civil rights laws, Petitioner now motions for writ of certiorari to the Iowa Court of Appeals. There is required to be just compensation for ALL takings when government appropriates private property, allegedly for public use. Amendment V, and XIV, US Const. First English Evangelical Lutheran Church v Los Angeles County, 107 S.Ct 2378 (1987) San Diego Gas and Electric Co v San Diego, 450 US 621 (BRENNAN J. dissent), Pumpelly v Green Bay, 13 Wall, 166, (1872), Kimball Laundry Co. v United States, 338 US 1, (1949) Nollan v California Coastal Commission, 107 S.Ct. 3141 (1987)

In this case, the 'public use' is for a parking lot, or illegal title grab, for support of a rival project across the street from the Vale hotel. Here, "[t]here is heightened risk that the purpose" was "[a]voidance of the compensation requirement, rather than the state police power objective. Nollan v California Coastal Commission, 107 S.Ct. 3141,3150

NW2d 472 Iowa 1986) A jury trial on damages transpired before a biased community and only attorneys fees (section 1988 Civil rights) were awarded (app:50,51) That public-private project is sponsored by the power structure of the city of Davenport and prominent local business people. (app:185-190 71-89)

Petitioner's hotel as a tourist attraction has goodwill; the developmental delay caused by the city's efforts to misappropriate his land, and quash feasibility procedure, allowed the untimely loss of recoup of investment in a sitting President's former home. Metro Bank v St Louis, 149 US 436,446, Pennsylvania Coal Co. v Mahon, 260 US 393 Alamota Farmer's Elevator & Warehouse Co. v United States, 409 US 470 United States v Causby, 328 US 256 (1946), Kimball

Laundry supra United States v Dickinson, 331 US 745.

The court below applied State law which was preempted by Congressional and the Executive Branch intent. This mistake[3] in choice of law actively harmed Petitioner's rights. Milwaukee v Illinois, 451 US 304, Palmore v US, 411 US 389, National Historic Preservation Act, 16 USC 470 et seq., 36, CFR Sec 800.10 (c) Sheppard v Maxwell, 384 US 333, Irvin v Dowd, 366 US 717

Alleging a `public purpose' nuisance abatement, the city staff and elected

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[3] Eminent domain law is in hopeless confusion as declared by every law review writer. see Williamson County Regional Planning v Hamilton Bank, 105 S.Ct.3100,3122 n.15, n.17, First English, supra, (dissent) 2399 n.17 There are as many views as their are circuits. Historic Preservation is also grossly underdefined throughout the circuits.

officials, placed the landowner in peril[4] of having his National landmark [placed into the Register by Petitioner in 1979 (app:69,70) demolished in a matter of days. (app:90-97) This precipitate action resulted in an immediate suit to prevent

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[4] The city ordinance and state common law of nuisance were asserted to justify this unconstitutional action. The Iowa Supreme Court intervened for Petitioner on a lack of notice `due process' rationale. Hancock v City Council of Davenport, 392 NW 2d 472 (1986)

Adjacent and prominent business entities, owned by the town's richest Bank, and Real Estate Company, allegedly conspired together with their employee, a Downtown coordinator-James Conway, to enact either a demolition or a land grab manuever. These parties are financially impacted directly by the existence of Petitioner's landmark building. James Conway, acted in concert with high city concert with high city officials and the bank to defraud. City councilmen, upon the advice of the city attorney, Mike Meloy, quasi-judicially carried out the Scheme, acting within an atmosphere of a flood of negative publicity [portrayed by the largest (downtown) newspaper's conflicting interest (app:149,150 213-215)] and misperception convincing the townspeople that the Vale hotel was a nuisance.

destruction of the building.

Petitioner brought a civil rights suit, but the suborned attorneys failed to protect those rights. One month before the first Supreme Court decision, in 1986 there was repealed a law which ever since Iowa had become a state, prevented city taxpayers from sitting on a jury when the city was a party. (app:31-33)

The petitioner moved for a change of venue under IRCP 167, and denied under IRCP 168 (d), (app:41-43 see 211) after

much publicity.[5]

Here the matter rests, with Petitioner's prospective future development and return on investment unsettled to this day.

The value of the early home of the sitting President where the 'Great Communicator' began his career is lost forever, but Petitioner deserves recompense for his efforts to preserve and restore this landmark.[6]

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[5] A jury verdict strongly suggests a compromise resulted, between those wanting to favor the city by denying the Petitioner any relief, and those who rightly thought a taking had occurred. (app:216)

In turn, this process resulted in jurors' swapping prevention of demolition in exchange for awarding a paltry sum, enough to pay only the attorneys' fees, and denying all compensation for the taking or litigation's delays. Repugnancy to the V and XIV Amendments is apparent.

[6] The court below limited the remedy by applying to the same lawsuit conflicting rulings of other courts which

Petitioner has argued above that the Iowa Supreme Court applied an erroneous Choice of Law and legal principles in ascertaining the existence and extent of `takings' and what remedy must follow.

ARGUMENT AND AUTHORITIES

[A] The pro se litigant's prolix and detailed recitation of facts did not obscure his good claim. Petitioner is guaranteed the rights of common law bestowed upon every man and woman of this nation. see Hughes v Rowe, 449 US 5,12-13,1980

In the case of this Presidential landmark, the police power illegally enforced by the city, under the heralded

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have passed upon similar matters. Thus, this case is affected more than any other by those conflicts, which should be resolved by this court in order to establish a uniform approach to eminent domain and protection of Nationally important `environmental' legacy.

ruse of "safety regulations" effected a result that was unduly oppressive to Petitioner and side stepped non distinct procedures in the State (see Hancock v City of Davenport, 392 NW2d, 472,479) "[g]ive the parties guidance on procedural and substantive matters."]

Petitioner submitted preliminary plans and structural reports in court: see Hancock at 474 ([t]he main bearings of the building are structurally sound.) Due process violations of the Petitioner's constitutional rights, directly resulted in a subsequent and compensable taking of an "unprecedented" valuation of property. (app:193-196)

This unconstitutional procedure resulted in an "unnecessary delay in obtaining approval of it's development plan, "Williamson Co. Regional Planning v

Hamilton Bank, 105 S.Ct.3108,at 3126.

The Fifth Amendment provides compensation to landowners and applies to the states through the Fourteenth Amendment. It is not a "speculative" determination of investment backed expectations [Historical Preservation] accounting patronage of a Presidential "legacy". A right essentially involved in the record allows review even though such rights are not expressly asserted below. Manhattan Life Ins. v Cohen, 234 US 123,134,: Tilt v Kelsey, 270 US 43,51.[7]

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[7] The Constitution does not embody any specific procedure..."[t]he Fifth Amendment expresses a principle of fairness and not a technical rule of procedure...regarding `cause of action' - when they are born,...and when they die." United States v Dickinson, 331 US 745,748. It would be a very curious and unsatisfactory result if....the government refrains from conversion of real property to the uses of the public (app:107-110) it can destroy it's value entirely, can inflict...permanent injury ...subject it to total destruction without making any

Petitioner's property was condemned twice (app:97) "When the government chooses not to condemn...but bring about a taking by a continuing PROCESS[8] (emp.ad.)...., The taking should not be subjected to premature litigaton." US v Dickinson, supra at 749[9]

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compensation...it is not taken for the public use. (***)" First English Evangelical Luth. Church v Los Angeles Co. 107 S.Ct. 2378,2387, San Diego Gas and Electric Co. v San Diego 450 US 651-52.

[8] "It would be unfair to deny compensation" If a "going concern" or "goodwill intangible" evaluation of real property "which is capable of transfer from owner to owner", in specialty properties "of a kind seldom exchanged" "taken" not in fee but for an indeterminate period" imposes major negative losses, as clearly has occurred here. The temporary interruption as opposed to the final severance of occupanc, so greatly narrows the range of alternatives open to the condemnee that it substantially increases condemnors obligation to him. Kimball Laundry v United States 338 US 1,11,5,6,15.

[9] The chilling effect of illegal condemnation halted development and marketing of the building dead in it's

"[T]he Constitution measures a taking

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tracks in 1984. The State Court erred regarding Petitioner's claims for compensation on the goodwill quantum valebant when applied to conjointment with a sitting President. (app:13,14) The courts have recognized that goodwill should be determined in light of the particular facts and circumstances of the situation. Miller v Commissioner, 333 F2d. 400,404, see 38 CJS Goodwill Section 6,p.954; 85 CJS Taxation Sec. 1175. see Solitron Devices Inc. 80 TC at 17-18, Justice Story's definition of goodwill is -"the advantage or benefit ...acquired by an establishment beyond the mere value of the capitol, stock, funds, or property employed therein...on account of it's local position, COMMON CELEBRITY (emp.ad.) ...or from accidental circumstances or necessity, or even from ANCIENT PARTIALITIES (emp.ad.), or prejudices." Metropolitan Bank v St. Louis Dispatch Co., 149 US 436, 446, Although the concepts of goodwill and going concern are so closely related, the absence of one does not preclude the existence of the other. "Going concern" value is separate and distinct from `Goodwill'; in Concord Control Inc. v Commissioner, 615 F2d. 1153,1154-55 "Going concern" is the increase in value of assets due to their existence as an integral part of an ongoing business. The `business' of real estate brokering manifests a multiplicity of practices, investment backed expectations, and legitimate forms.

of property not by what a State says, or by what it intends, but by what it does.(***) It is only logical, then, that the government action other than the acquisition of title, occupancy, or physical invasion can be a `taking' and therefore a de facto exercise of the power of eminent domain,[10] where the effects

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[10] Petitioner gave good faith notice notice (app:62-68) to the city specifically listing "variances" and indicating a reasonable and flexible approach AFTER, a consensus could be made as to the viability of restoring the Historical landmark; "[t]he finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual concrete injury (app:44-46,110) Williamson supra at 3120. "Rules developed for the simple situation in which all owners interests in the property [good will] (br ad) have been irrevocably severed should not be forced to fit the more complex consequences of the piecemeal taking of successive short term interests. Such takings may involve compensable elements that in the nature of things are not present where the whole is taken." Kimball Laundry supra at 338 US 1,22

completely deprive the owner of all or MOST[11] of his INTEREST[12] (emp. ad.) in the property. (***)" San Diego Gas supra at 653.

The "Plains Georgia" phenomenon historically demonstrates the significance of massive public acknowledgement, and vendibility[13] of Presidential "legacy",

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[11] "...[t]emporary regulatory takings which, as here, deny a land owner all use of his property are not different in kind from permanent takings for which the Constitution clearly requires compensation." First English, supra at 2388.

[12] The loss of public relations value to the building, land, and owner are astronomical when the extrapolated effect of the international daily coverage a President gains is factored in, whether the President acknowledges the property,(app:217) or not.

[13] "When the part not taken is left in such shape or condition as to be in itself of less value than before, the owner is entitled to additional damages on that account. (***)" see US v Dickinson, supra at 750

when applied as accruable value in reasonable investment backed expectations [14] "A Landowner is entitled to bring an action in inverse condemnation[15] as a result of the self-executing character of the constitutional provision with respect to compensation."[16] First English, supra at

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[14] President Nixon, Ford, and Carter's "out of office" national and international news coverage pales in comparison to a sitting chief executive. see Mandelker, Investment Backed Expectations: Is There A Taking, 31 Wash.UJ, Urb, Contemp. Law,3,6

[15] The State court has attempted to estopp that right. "A landowner...may not recover damages for the time...that the regulation constitutes a taking...We disagree, and conclude...the US Constitution would require compensation for that period." First English, supra at 2380-81

[16] It contradicts the record alleging that Petitioner raised the issue of inverse condemnation "specifically for the first time on appeal" (app:202). The question was presented primarily in appeal to the Iowa Supreme Court [68966] and denied jurisdiction without prejudice, and an original section 1983 action was dismissed. Hancock, supra at 479

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Federal issues,[17] finally decided by the highest court in the State in which a decision could be had, will survive regardless of the outcome of future state court proceedings[18] [jurisdiction of a Presidential home inter alia]. Cox

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(app:180,181)

[17] "...[t]he fact that federal substantive interests are at stake is a factor militating, in some degree, against treating the state court judgment as conclusive." Restatement (Second) Judgments, Sec. 86 (b). Statutory exception has left open the implication of an exception to the rule of claim preclusion. Id. (d) see 42 USC 1983, Congressional [AND Executive Branch] br.ad. "intent" regarding Preservation and Federal protection is clear. 36 CFR 470, (6&7), 36 Fed Reg. 8921, 36 CFR Sec. 800.10.

[18] Congress has recognized that damages to the owner is assessed not only for the value of the part taken but also "for any injury to the part not taken." see Dickinson, supra at 751.

Broadcasting Corp. v Cohn, 420 US 469,480 (1975)

In this case "...[i]nvalidation of the regulation cannot cure the taking", and, "[t]he restriction on the use of the property would have to remain in effect for a significant percentage of the property's[19] useful life." First English (dissent) at 2394.

This Court did not decide "...[w]hether the ordinance at issue actually denied appellant all use of his property, or whether the county might avoid the conclusion that a compensable taking had

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[19] President Reagan will never again be in office. Petitioner lost of "common celebrity" accrual of an 'in office' public recognition value, totally and permanently. Individual enjoyment of property is the protected constitutional command. It is that "vested ownership" that gives the right, not the duty to develop, as well as the right not to develop.

occurred by establishing that all use was INSULATED[20] (emp.ad.) as a part of the State's authority[21] to enact safety

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[20] First English cites Hadacheck v Sebastian, 239 US 394. Hadacheck lends no principled support to a broad conception of the police power divorced from it's anti-nuisance rationale. Instead diminuation of value has here the same role that it does in tort. It is relevant only on damages once liability is established by some independent criterion; "...[c]ourts of equity are concerned with protecting the operator of a lawfully, albeit noxious, business from the result of a knowing and willful encroachment by others near his business." Spur Industries Inc. v Del E. Webb Development Co., 494 P2d. 700,706,707. Petitioner asserts that the original contention of "nuisance" or "noxious" quality of the landmark pursued by the defendants was feigned. N o police power rationale obtaied. (see Hancock, supra at 477 "....does not contend....emergency". "The form of the remedy did not qualify the right." Jacobs v United States 290 US 13 at 16. Damages are the only remedy.

[21] If the evidence favorable to the plaintiff makes out a prima facia case, even though the trial court would be forced to set aside a jury verdict for the plaintiff and grant a new trial (app:132-155) [motion denied] see (app:47-49,178-180,193-94) [Judge Briles] based on it's view of all the evidence. Wilkerson v

regulations." First English supra at 2385

"There may be some situations...the temporary existence of a regulation has such severe consequences that invalidation or repeal will not mitigate[22] the damage[23]

McCarthy, 336 US 53,57.

[22] The property interest the state has taken is a negative covenant to eliminate or restrict the use of the property. A "Presidential" landmark of this stature cannot be subjugated to "market" comparisons and discrepancies, nor is the PR value easily ascertained. Generally, monuments of this nature are not for sale.

[23] "The payment of just compensation serves to place the landowner in the same position monetarily as he would have occupied if his property had not ben taken" Almota Farmers Elevator and Warehouse Co. v United States, 409 US 470.473-474, (1973) and cases cited, United States v Reynolds, 397 US 14,1 "Truly,...[t]he applicability of express constitutional guarantees is not a matter to be determined on the basis of policy judgments made by the legislative, executive, or judicial branches. Nor can the vindication of those rights depend on the expense in doing so." Watson v Memphis 373 US 526,537-538 Exemplary damages are the preventive safeguard.

enough to remove the taking label."[24] First English supra at 2393

An examination of the difference in value of the property before and after the invalid regulation was enacted leads to the question: To what extent will the government assume responsibility[25] for

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[24] "A regulatory program that adversely affects property values does not constitute a taking unless it destroys a major portion of the property's value.(***)" First English supra at 2389 "The determination of a taking is a question of degree and therefore cannot be disposed of by general propositions." Pennsylvania Coal v Mahon, 260 US 393, 413-415.

[25] San Diego Gas, supra at 661,n.26 states: "[i]f a policeman must know the constitution then why not a planner? (app:183-84) [it is incredible Conway, a `downtown coordinator' denies these studies; this is another affirmative link to special interest] (app:71,72-77,170-173,117-122) "In any event, one may wonder as an empirical matter whether the threat of just compensation will greatly impede the efforts of planners. "Id. This observation addresses the heart of the internal process of administrative entities of local government, and in the land-use context, a "check and balance"

property taken from a citizen and judicially decree it is for the "public welfare", when the facts show, the owner did his civic duty, and through preservation, escalated the very substance of community civic welfare?[26]

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oriented policy is consistent with the intent of civil rights. It will precedent a fair result if the "policy and custom" predicted by the dissenters [in First English 2399 n.17], complies with constitutional safeguards; citys will govern with checks and balances, as the federal government must, and be required in policy matters, to insure fair and equal protection of the law.

[26] The Full compensation version of the Before-After Valuation Method suits the proposition that: "...[t]he owners loss not the takers gain which is the measure of the value taken", and "It is axiomatic that the V Amendment's just compensation provision is designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice should be borne by the public as a whole.(***)" First English supra at 2388, see Columbia Journal of Environmental Law, Vol 14:247

This case reveales that `circumstances' present `specialty properties' for consideration under strained reasonings when applied to current throroms of appraisment: "Additional rules of evaluation may need to be developed." Kimball Laundry, supra at 577

[B] The jury foreman, made an express statement that: "[o]ur decision was not a victory for Mr. Hancock...the city had a good defense, but we felt that Mr. Hancock's constitutional rights were violated, he should be awarded just a small portion of his attorneys fees and only that." (following:..."[n]one of the jury members[27] felt it was a victory for

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[27] Petitioner's claim, inter alia, is that the jury `ad hoc', decided the case on presumed evidence not presented in court. The false presumption was manifested in the form of a `hyped' "nuisance"; growing community prejudice resulted in the misperceptions of a large building in the middle of their downtown,

him or we never would have COME to that conclusion..." And "[w]e would have voted to have it demolished." (app:216,149,198-200) This statement reveals that there was sharp conflict between the compensation faction on the jury and a `no taking' faction, strongly indicating a compromise

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and harmful inference of responsibility was imputed to Petitioner, who was transformed into a public figure by the media with regard to that particular controversy. see McDowell v Paiewonsky, 769,F2d,942,947. Absence of `smoking guns and bloody shirts' in this CIVIL case, does not overcome the existence of prejudice furthered by media, (app:218-225) and exacerbated by the landmark's everyday presence. Nor does the passage of `time' before the trial, regarding news coverage, erase the bias.

verdict was reached.[28]

The discretion[29] of the trial judge is given deference in determinative power as to venue, however, that discretion in a community prejudice case with implications of "media" conflict, must consider the totality of the circumstances. [30] see

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[28] Procedural due process limits governmental actions depriving individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the XIV Amendment. Mathews v Eldridge, 424 US 319, 332, (1976)Due Process means a jury capable and willing to decide the case solely on the evidence before it. Smith v Phillips 455 US 209, 217 (1982)

[29] The totality of the circumstances can be distorted upon any record through procedural default (app:185-187,140-141,232-35) neglect or fraud. (app:159,33-43) The "Manifest error" standard is applied to trial court discretion concerning change of venue motions. Instant case shows `editorial' comment was abusive and prejudgmental. Patton v Yount 467 US 1025,1031(1984)

[30] Instant case falls squarely under the presumed prejudice standard. see Rideau v Louisiana, 373 US 723,726

Sheppard v Maxwell, 384 US 333,

The "right" to a jury trial does not circumvent that jury, or the PROCEDURES and CUSTOMS (emp.ad.) statutorily enforced or practiced by the State to empanel the same, any less strict construction to insure impartiality.

The question whether a juror has an opinion that disqualifies is a mixed one of law and fact. Reynolds v United States 98 US 145 (1879), Irvin v Dowd, 226 US 717

(Television [newspaper's slanted opinions] has exposed the community "repeatedly and in depth to the spectacle"), Pamplin v Mason, 364 F2d 1, (That voir dire did not demonstrate community prejudice was immaterial with respect to whether such prejudice denied a fair trial...it was unnecessary to prove that local prejudice actually entered jury box. There was sufficient possibility of prejudice lurking in the background to warrant reversal for new trial. Id at 7 (app:216) Coleman v Kemp 778 F2d 1487, (Jury selection process cannot survive Harmless Error Doctrine, Id. 1540 n.24)

(1961) The state appellate court[31] failed to consider any false represenatations made by Petitioner's alleged attorneys.[32]

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[31] The Iowa court of Appeals review erred significantly, (app:177-178,198-199) and the newspaper responded in kind quoting the incorrect determination of the Court, continuing the myth that there was no contrived propaganda. (app:132-155); "...[t]he poisoner is constitutionally protected in plying his trade" Irvin v Dowd supra at 730

[32] The courts should abandon the agency theory of attorney-client relationship. see Duke Law Journal 1988: 733 "The agency theory fails to reflect a clients lack of participation in procedural matters. Further it contravenes the long established distinction between plenary attorney discretion in procedural matters and client discretion in substantive (app:203-210,156-161,201) matters. Id. 742

The court[33] relied on `criminal' analogy to `instructively' uphold an incongruous concept. (app:6-11) Psychological perceptions by jurors subjected to heinous facts [in the criminal realm media coverage] as opposed to civil issues that linger, and impact them personally, manifested by the manner in which they are presented in media,[34] are logically subject to vastly differing portrayal, and

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[33] The State Court concurrence with the defendants argument, instructively applying criminal cases (app:6-11) is discriminatory and overbroad when applied to civil litigants and Petitioner's argument is valid. (app:174-177,180-181) see `curative admissability' 1 Wigmore on evidence Sec.15 (3d Ed McCormick on Evidence Sec. 57 2nd 1972)

[34] "This ownership link between a local bank and the local media (app:160,213-15,149-50,185-87) may produce a dangerous concentration of power." Iowa Law Rev. Vol. 56, 278 The reporters may compromise journalistic standards Id.279

emotional response.

The traditional method of determining prejudice through the voir dire examination is inadequately practiced in CIVIL CASES; the issues can be distorted by conflict of interest of the local political machine. (app:185,190-92,71-76,117-72) The civil litigant must be guaranteed the same impartial jury as the criminal American;[35] "...[t]he psychological impact requiring such a declaration (of impartiality) before one's fellows is often it's father." Irvin v Dowd supra at 728. The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment of the mental processes of the

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[35] The American Bar Standard 54 ABA Journal 349 Requires for criminal cases: individual voir dire in media cases. It has "...never been the practice in Iowa." See State v Elmore 201 NW 2nd 443, 446

average man. See Irvin v Dowd, supra at 840, 842-843.[36]

If a city is a defendant, the trial courts "sound discretion" must undergo strict scrutiny in the appellate arena to

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[36] Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular test and procedure is not chained to any ancient and artificial formula. United States v Wood, 299 US 123, 145-146 Stilson v United States, 250 US 583, 586.

Empirical studies indicate that the voir dire exam is inadequate to remove those jurors who may have significant biases or prejudices. see Ziesel & Diamond, the Effect of Preemptory Challenges on Jury & Verdict: An experiment in a Federal District Court, 30 Stan. L. Rev. 491, 528-29 (1978) and Broeder, Voir Dire Examinations: An Empirical Study 38 S. Cal. L. Rev 503 (1965), Suggs & Sales, Juror Self-Disclosure in the Voir Dire: A Social Science Analysis, 56 Ind. L. J 245, 271 (1981) When a highly publicized civil case comes to docket the judge must show that he has taken all precautions to assure impartial jury empanelment.

prohibit judicial legislating.[37] In this case the trial court gave inconsistent explanations for overruling the motion for change of venue and there was procedural default. see [Rule 10(10) Iowa Criminal Code.] Discretion was abused. (app:211,54-58,) Bias was a controlling factor in the verdict. This attitude is embedded into each jurors subconscious.[38]

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[37] Congress intends a federal remedy in three circumstances: where state substantive law was facially unconstitutional, where state procedural law was inadequate to allow full litigation of a constitutional claim, and where state procedural law, THOUGH ADEQUATE IN THEORY (emph. ad.), was inadequate in practice. Monroe v Pape 365 US 167,173-174

[38] see Singer, Singer and Singer, Legal and Social Psychological Research in the Effect of Pre Trial Publicity on Juries, Numerical Make up of Juries, Non Unanimous Verdict Requirements 3 Law and Psychological REV 71, (1977)

If heretofore controlling statute is unconstitutionally applied, [see IRCP 167], and there was procedural default,[39]

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[39] Pickens v Lockhart, 542 F. Supp 585, (1982) is instructive. The cause and error standard of Washington v Strickland, 673 F2d 879, was examined and from Morrow v Parratt, 574 F2d 411,413-414, the case extracted the rule that the attorney's failure to investigate, inter alia, caused prejudice. Their troublesome issue was the question of effectiveness of counsel, in and if lacking, this would satisfy the `cause' prong of the standard, and that the client was not prejudiced because counsel had filed a `comprehensive brief" and had done `Herculean' (app:90-116) labors, only in favor of their fees. Flynn's misrepresentation, (app:140-41,) to the courts, while he continued to work on the case, filing papers, including a jury demand on a dismissed case, (app.201) and withdrawal on the EVE of the trial when petitioner's property was put in jeopardy by a Scott County Attorney, (app:187-88,54-58) left Petitioner totally compromised. Liabo succeeded in keeping the cause within the prejudicial venue by NOT submitting any evidence in his motion to change venue, and failed to raise proper peremptory challenge as to voir dire, when he was well aware of the community sentiment. He also retained the records and placed a lien against Petitioner. (app:186-87,52,53)

Iowa Law does not remedy the injustice.[40] Civil cases involving prejudice, deserve the equal protection of the law[41] through all legal procedures, including the voir dire. [42]

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[40] The mechanisms envisioned inside present Iowa law do not provide remedy in a case of community prejudice in jury selection, instead it relies on "...the impossibility of any enumeration which encompass and envisage all of the varieties of relationships which might and do bear heavily upon the selection of jurors" as a disclaimer to fair selection of venireman. see 18 ALR 3rd 416,422

[41] Even when the evidence appears overwhelming (a large building in the middle of downtown) and reasonable minds cannot acquit the defendant (in this case rightfully award damages), the double standard of affirming convictions when the evidence is overwhelming and reversing convictions when the evidence is weak is not an acceptable practice under the American System of Government. Each defendant is entitled to a fair trial before an impartial jury. Irvin v Dowd supra at 722

[42] The idea of rejecting the underlying values of a constitutional guarantee, or of viewing the guarantee as burdensome and thus to be restricted-if

[C] The leading case for overturning a jury verdict in exercise of a peremptory challenge system is Swain v Alabama 380 US 702 (see 32 Stanford LR 189), now partially overruled by Batson v Kentucky, #87-5259. 2,22,1989,.[43] The evidentiary showing required is the part overruled. The Swain case imported in the criminal

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applied to other portions of the Bill of Rights-would certainly be rejected. A lack of sympathy for the objectives of the Seventh Amendment continues the functionally meaningless application of the historical test in the hands of some judges, Ross v Bernhard 396, 396 US 531 Also see In re US Financial Securities Litigation 609 F2d. 411 9th Cir 1979 SRI Itern v Matsushita Elec. Corp of Amer. 775 F2d, 1107, 1131 (Fed Cir. 1985) [Judicial economy and expedition being served is irrelevant. The VII Amendment contains no "economy" exceptions.]

[43] Batson held that a defendant can establish his case by showing that he is a member of a cognizable group and that the prosecutor exercised preemptory challenges to remove all members of his group.

jury selection a fair cross section requirememt. See Taylor v Louisiana, 419 US 522.[44] The instant case relies on the following language in Gottfried:" [p.363]. "[4] It has indeed been stated that jurors must be drafted "without systematic and intentional exclusion" of any "geographical," as well as of any "social, religious, racial" or "political"

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[44] The US Supreme Court has held that the first Judiciary Act of 1789 has always mandated an impartial trial. In US v Gottfried, 165 Fed 2d 360, jurors were selected from only three counties of NY state's southern district for the entire district comprised of some 11 counties. This excluded approximately 1/8th of the districts population from jury duty. Defendants were convicted and challenged the exclusion of "rural jurors", said to be about 7% of the part of the district utilized, at 16% if the entire 11 counties were utilized, in other words, the court said, the defendant would have about an even chance of getting two "rurals" if the whole district were used, but only one rural under the system used. He would then get some rural jurors even with the system then in force.

group;....the district and circuit courts have had power since the first Judiciary Act of 1789 to divide a district territorially in the interest of an impartial trial, of economy, and of lessening the burdens of attendance...." From this quoted language, it is apparent that the Court was concerned therein mainly with the problem of geography since there was no mention anywhere of the primary concern here, that of the overwhelming prejudice[45] of city taxpayers in favor of their city, a party defendant. (app:246) A majority of five of the eight jurors were residents of Davenport, the

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[45] Disqualification is better than letting a juror serve if his partiality appears prima facia, from his city taxpayer status. see People v Harris (1981 2nd Dept.) 84 APP. DIV 2nd. 63,445 NYS 2d.520,affd. cert. den.

other three were from Bettendorf.[46] Petitioner is not asking for any homogenous equal percentage of all possible groups. Furthermore, in Gottfried there was an ambiguity in the definition of "rural" resident which does not obtain with county or city taxpayers, certainly capable of unambiguous identification.

Petitioner by virtue of the county seat influence cannot rely on `credible' transfer of `unimpeachable' verification of any of the documentary evidence in the entire matter.(app:52-53,203) The `complete' records are within the

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[46] Petitioner herein complains of the city's exclusion of all residents of Scott County outside the `impacted' city limits of Bettendorf, part of the Quad Cities, and subject to dificult parking problems in downtown Davenport. Likewise, Gottfried was not concerned with the aspect of undue influence of members of the city staff and council represented by influential attorneys in the city. (app:160,71,152-153)

possession of the attorneys and the Scott County courthouse. see IRCP Rule 167 (a) Jurors from outlying districts are "a cognizable group". [47]

In instant case, Art. 609.45 (app:31-32) was repealed one month before Hancock v City Council was originally handed down in August 1986, removing the safeguard against city taxpayers prejudice which had long existed in Iowa in the interests of

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[47] This case is implicit with a city taxpayers being jointly residents of the County Seat, with the same problems analogous to those in the cases where jurors exposed to insurance company advertising will worry about increasing their premiums by their verdicts. See 10 St. Mary's Law Review 399; 37 Washington & Lee Law Rev.1175-9 and 18 Duquesne 761-9, citing Virginia State Board of Pharmacy v Virginia Citizens Consumer Council, Inc., 425 US 748,765 (condemnation of false advertising) and see King v Westlake, 572 SW2d 841 (Ark.78) and Boroski v Yost, 594 p2d 688 (Mont.79).

an equally apportioned,[48] and impartial jury capable of a fair trial.

The "cognizable group" theory was discussed at great length in the case relied on by the appellate court in McDonald, O'Hare v Superior Court, 43 Cal.3d 86, 729 P2d 766 (JAN.,1987), wherein the court discusses the difference between cross-section and defining the community for that purpose, and defining the community for the concept of "vicinage"[49] which found its way into the

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[48] See People v McDonald, 237 Cal. Reporter 597, (holding that the policy of assigning jurors to courthouses nearest their homes denied a defendant his right to a jury drawn from a fair cross-section of the community.)

[49] The O'Hare court stressed the need for a jury of the vicinage of the crime in the Sixth Amendment. The starting point in any analysis, said O'Hare, is the demographics of the community served by the "judicial district." The court discussed the possible disparity of the demographics of the venire and the

Sixth Amendment.

An exhaustive discussion of civil juries, Luneburg and Nordenberg, at 76 Virginia Law Rev. 887,927,969, gives Justice Patrick Higganbotham's views as worthy of great deference, in McGinnis v M I Harris, Inc., 486 FSupp 750 (ND TX,1980), a jury in civil cases MUST be nonbiased. Mr. Justice Higganbotham of the

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demographics of the community, Id. at n.6, p.94, by stating that where there is a significant disparity it becomes incumbent on government to demonstrate a compelling state interest to support the disparity. Herein a demographic disparity is in the concern of taxpayers with the threat of increasing taxes as a result of the litigation and the parking problem near the site. This problem clearly presents a financial motive of the special interests. (app:71-89) Because the unconcerned residents of the county in the outlying judicial district would not be worried about city taxes, limiting the venire to a majority of local residents only is to create a serious failure to mirror the community, and no showing of any state interest can be made except to favor the city staff.

Fifth Circuit Court of Appeals, cited Peters v Kiff, 407 US 493, for this view, stating that an equal or greater bias in jury selection would be required to establish a constitutional violation in a civil context (than for a criminal jury, where there is less tolerance for nonrepresentativeness.) Even so, the demonstration of bias of local taxpayers as opposed to county taxpayers outside the impacted city is overwhelming. An award of "no" damages is proof that a nonrepresentative jury with a built in bias was allowed to be empaneled in the case at bar. Petitioner requests this court to use its powers to undo the violation. It is apparent that where the majority of jurors are city residents and an opposing attorney is representing highranking city officials and councilmen

on trial, there is undue influence of usual force.

This implicates paragraph (c) of IRCP 167[50] implicit in Rule 167 (a) is the concept of equal protection of law. In order to prevent the undue influence[51] of the COUNTY over the jurors.

An unconstitutional application of statute IRCP 167 denied a just result.

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[50] Here the `adverse party has such undue influence.' No affidavits were filed. (app:41,42) Liabo's jury challenges were errant. While peremptory challenges are not of constitutional dimension, the court has held that they are "subordinate (unfettered discretion) ...to the goal of empaneling an impartial jury," Ross v Oklahoma, 108 S Ct 2273, decided June 22, 1988.

[51] NOTE 4.4 The Code of Iowa: The legislative intent is to comply with the constitution. A just and reasonable result is intended. In instant case the City of Davenport is the county seat. The issue of equal protection arises whenever a litigant invokes the civil rights act, Section 1983.

"Even though a peculiarly fair minded juror might state that he might not be prejudice, yet it is an unfair position in which to place a juror and the plaintiff in the case." see 18 ALR 3rd 416 It is unlikely that any juror would admit voir dire his bias in favor of the city. US v Allsup 566 F2d,68,71 This court should recognize that the issue of equal protection was in fact implicit in the factual circumstances as well as the arguments and citations in the briefing in the lower and trial courts, especially Rule 167 (a) & (c) and Section 1983. The entire purpose of these statutes is to entitle the ordinary man to the same standard of fair jurors as the most prominent members of the community.

[D] Municipal ordinances and regulations adopted by state

administrative agencies are authorized for appeal as state "statutes." 28 USC 1257, King Manufacturing Co. v Agusta, 277 US 100 (1928) and Hamilton v Regents of University of California US 245 (1934) "This Court has "...[f]requently treated such challenges to zoning ordinances as challenges to their validity under the federal constitution, and see no reason to revise that approach here. (***)" First English supra at 2385 n.8

In challenging the ordinance (Ordinance 15.08.210) on this record Petitioner asserts that the "law of the case" is not an absolute mandate controlling this court since it may be ignored in extraordinary circumstances vitiating it's effectiveness as a rule fostering orderly convenience. Barrett v State. Mut Life Ins. Co. 440 US 912 cirt. denied. 99 S.Ct. 1226.

The repugnance of the ordinance is plain, and palpable, and consolidation of this record is appropriate; this litigation is of extraordinary circumstances. Courts are ordinarily deemed to have inherent power, independent of any statutory authorization, in ordering consolidation of pending [the ordinance still threatens][52] action between the same parties. Consolidation was denied to Petitioner, (app:16-17) and now appealed, upon the same questions in controversy. The courts may exercise this power with considerable freedom in the interest of the parties and public. Bowen

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[52] If the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly. Pembaur v City of Cincinnati et al, Case #84-1160 decided March 25, 1986 _____S. Ct._____

v Chase 94 US 812

Hancock supra at 473 states: "Serious flaws in the proceedings...preclude our reaching beyond the procedural due process issues..." This suggests that the State Court of Iowa erred in adequately considering the constitutionality of the ordinance. "[i]f it (the question) were so connected...in substance as to... invalidity of the [lower court's] judgement, we should have no hesitation in holding...the question to be now raised and argued. Parties are not confined here to the same arguments which were advanced in the courts below upon a Federal question [validity of an ordinance] there discussed." Dewey v Des Moines, 173 US 193,197-198 (1899)

Hancock supra at 477: "In comparing the procedure set forth in the city's ordinances with the procedure used...we PASS (emph. ad.) the question whether the city could properly interchange the

housing and nuisance ordinance procedure in arriving at an enforceable order for vacant demolition."

By its own laws, the city could not tear down this secured and unoccupied building, (app:123-128) if that was indeed the ultimate plan. (app:189-91,117-22)

Compliance with Federal common law of nuisance would not act to usurp obvious Congressional and Executive Branch intent as to administrative protection of environmental criteria. Congress has not left the formulation of appropriate federal standards to the courts through application of often vague and indeterminate nuisance concepts and maxums of equity juris prudence, but rather has occupied the field through the establishment of a comprehensive regulatory program supervised by an expert administrative agency. City of Milwaukee

v Illinois 451 US 304 (1981) see National Historic Preservation Act (NHPA), 16 USC 470 et seq. Executive Order 11593 at 36 fed. reg 8921, 36 CFR sec.800.10(c),[53](app:161-167)

A President's home is beyond the jurisdiction of local "political authority". Many federal safeguards are in place to prevent abuse of national landmarks. [54] The building is located

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[53] "...[b]oth Congress and this court have recognized....where laws of national applicability and affairs of national concern are at stake must in proper circumstances give way to accommodate plenary grants of power to Congress to legislate with respect to specialized areas having particularized needs and warranting distinctive treatment." Palmore v United States, 411 US 389 ,407

[54] The Secretary of the Interior has a constitutionally and Congressionally based mandate to protect the rights of the public in the parks [historical objects] United States v. County Bd. of Arlington County, 487 F. Supp. 137 at 139, 140 (1979), Congress has concluded: "...historic properties significant to the

directly on the Railroad easement and adjacent to a span of the bridge[55] connecting to the Rock Island Arsenal and

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Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency." 16 USC Section 470 (b) (3). The NHPA created the Advisory Council on Historic Preservation (ACHP) which ultimately must report it's comments to the President, the Congress and the Secretary of Interior. 36 C.F.R. Section 800.10.

[55] In 1842 Attorney Abraham Lincoln (see Hurd et al. v Railroad Bridge Co. US SUPREME COURT) litigated the right of this RR bridge to exist. In 1969 the Illinois Supreme Court decided in reference to the protection of Lincoln's home in Springfield that: "....[p]reservation of historical areas.... is within the concept of public welfare..." see Rebman v City of Springfield 250 NE 2d. 282 at 288 and a companion decision: "When property has an enhanced value by reason of planning and zoning for historical preservation....the owners [of surrounding properties] seek to use it for commercial purposes to exploit visitors and tourists attracted, in part at least, by the creation of the Historical District" M & N Enterprises Inc. v City of Springfield 250 NE 2d 289 at 293. (see Historic Preservation magazine published by the 'National Trust'-March-April, 1989)

Chemical weapons Command aka AMCOMM. The circumstances of this case, usurped district court jurisdiction. [see 28 USC 1345] from the outset. By shielding discovery (app:39,40) and with procedural default in rectafying the curtailed time limits, [Flynn's withdrawl (app:33-40) inter alia] the ACHP (Advisory Council on Historic Preservation) was not notified.[56] Local procedural mandate [improper discovery re; complex litigation[57]/

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[56] The councils determinations are owed great deference unless clearly in error Red Lion Broadcasting v FCC 362 US 367-381

[57] Department of Transportation requirements were not shown to be complied with. [see DOT Sec.4F] (app:165-66) Stop H-3 Ass'n. v Coleman 533 F2d 434 (Insight into Congressional intent as to physical 'jurisdictional' authority, divorced from merely 'political' authority are indicated at Id. 442-443 n.15 (inclusive). In instant case discovery of these complexities was shielded by the trial court imposing unreasonable procedural bars on the time frames when Petitioner

historical landmarks] must not override the federal process of Executive and Congressional intent (see NHPA). The location is specifically conjoined to, and the "effect" is upon the landowners property by virtue of RR easement [access during time of war] of a government defense operation.[58] This furthers the contention that federal remedy was appropriate[59] initially. National defense

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was without counsel. (app:38-40)

[58] see Title 33 Section 650 and Army Corps of Engineers Permit Program Regulations 33 CFR Sec.320.4(a) to (j)(4) (1977)

[59] Even where the authority of one branch over a matter is not exclusive, so that a federal court properly may accept jurisdiction over the dispute, we have recognized that the principal of separation of powers continues to have force as a matter of policy. See United States v Nixon 418 US 683 (1974)
It is now beyond question that a State's political subdivisions must comply

matters, by necessity, are ongoing and comprehensive. See Causby v United States, 328 US 256

If a Presidents home, privately owned, is destroyed, divested of goodwill, or confiscated by a municipal ordinance under the enabling power of state[60] will the state assume liability[61] to the landowner

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with the XIV Amendment. The actions of a local government are the actions of the State. Avery v Midland County 390 US 474, at 480 (1968).

[60] The extent to which a higher level of government, [in this case the federal government] must comply with a local ordinance remains an unsettled question. Compare City of Ithaca v County of Tompkins, 355 NYS 2d. 275 (Sup. Ct. 1974) and Mayor of Annapolis v Anne Arundel County, 316 A 2d 807 (1974) [See 26 Syracuse rev. 407] with Texas Antiquities Commission v Dallas County Comm. College Dist. 554 SW 2d 924 (Tex 1977).

[61] If the V Amendment "Just compensation" clause obtains, is the state, or the city, required to reconstruct [in the event of illegal

for the negative economic impact?

The Supreme Court has held that, as a matter of federal constitutional law, a prosecution under a municipal ordinance is a "criminal case". Camara v Municipal Court, 387 US 523 (1967), See v City of Seattle, 387 US 541 (1967). (app:212,193)

Ordinance 15.08.210 allows that "[i]n the opinion of the building official[62]...they shall...recommend action

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demolition] from the original building materials a facade complying with the Sec. of Interior's guidelines including reestablishing any adjacent easements, in this case within the `national defense functionality' jurisdiction of the War Department? Indiana ex. rel. Historic Landmark Found of Indiana Inc. v White River Dev. Comm'n, 5 Preservation L. Rep. 3005 (1986)

[62] A vested title holder (landowner) may not "tear down" [change] a historical building without first complying with federally mandated protectionary guidelines. eg. Penn Central

required to abate the nuisance to the city council."

[E] If a city brings action against vested rights, without compliance with federally (S.CT.) upheld `historical preservation caselaw', and the landowner whose `vested rights' are administered by Federal intent ie. [environmentally controlling preservation statutes], and

Transportation v City of New York, 438 US 104, First Presbyterian Church of New York v City Council of New York, 360 a.2d. 257, Dempsey v Boy's Club of City of St. Louis, Inc. 558 S.W. 2d. 262 The national government "intent to protect" historical properties grants plenary administration of `vested' interest in that land. The vested interest doctrine has it's origins in the constitutional realm. If the national government, after it's own examination of the relevant state law and PROCEDURE concluded that the state forum would not be sufficiently sensitive to the interests of the national government, the official (Secy of Interior, Secy. of the Army, the President, Congress,) could remove the action to federal court see 28 USC Sec. 1442 (a) & 1442 (a-2)

municipality brings civil action against those `vested rights,' does the federal officer, from whom "title is derived", spiritually [common law] enjoin to the action? [63]

The effect of free and unlimited "fact-finding" power, to make judicial determinations regarding activities that may be categorized as "criminal", grants[64]

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[63] "Jurisdiction means the right to say and the power to act. Jurisdiction is the power of that particular agency to enforce the law." Carrol Vocational Institute v US, 211 F2d 539,549 Cert. denied. 348 US 843

[64] In instant case the fire marshall and housing inspector were not even present at the city council meeting. (Hancock at 478-479), and yet their "findings" under this ordinance constituted a "prima facia" nuisance determination before the city council. see Harrisonville v Dickey Clay Co 289 US 334 (defining nuisance) Ordinance 15.08.210 states at (C) "The city council,...may order the property owner...to abate the nuisance, PRESCRIBE THE MANNER OF ABATEMENT, and FIX the time within which the order shall be complied with"

the building inspector, or the judge who procedurely errs, more power than the federal government. This inquisition style hearing[65] allows in effect, a `taking' by

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(Emphasis added) The granting of Home Rule to cities (Section 364.1 the Code of Iowa) does not alter the jurisdiction of the District Courts determination [in this case the courts proclamation that jurisdiction locally is legal] of an issue. See (Iowa Code Section 657.4 and 364.17 (3) (a) (g). The Code of Iowa 364.3 (6) states Ann: "Rule of strict construction of restrictions of free use of property is applicable where wording of restriction is ambiguous" and "when there is serious question as to the reasonableness of taking under POLICE (emph. ad.) power, ordinance will be construed so as to avoid virtual confiscation and unconstitutionality".

[65] In effect this ordinance denies due process of law to the "accused" [alleged ordinance violator] because it overrides a court hearing on the issue. "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship 379 US 358, 364 The ordinance is repugnant to the V, VI and XIV Amendments of the US Constitution. The ordinance: 1) illegally threatens title 2) shift the burden of the

demolition and a charging back the cost, in a setting not conducive with court proceedings. Coit Independence Joint Venture v FSLIC as Receiver for First South SA, #87-996, 3/21/89

This substantiates the invocation of a principal that a hybrid civil-criminal [66]case requires stringent and all of the

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right to exist upon the landowner 3) supercedes federal environmental intent. A court of improper jurisdiction must not decide issues of national importance.

[66] "Invalidation unaccompanied by payment of damages would hardly compensate the landowner for any economic loss suffered during the time his property was taken." San Diego Gas, at 575 & 22 eg. "If all else fails, merely amend the regulation and start over again. "[N] The city promises now that: "No matter what action either party takes next, Hancock, regardless of his belief, will have the benefits of PROCEDURAL (emph. ad.) protection as previously held by this court. (See Hancock ante. at 477 [question passed & 479 decline guidance]." (app:183,184) and also "as a PRACTICAL (emp. ad) matter, final action by this court merely puts the parties back to where they were in 1984. "Id. Petitioner

encompassing procedural "equal protection" of the law.

[F] The personal legacy of a President of the United States inherently encompasses a broad national and international importance. The instant global effect of the news media promotes a desire and in all likelihood a policy to sustain optimum quality in the fashioning of a public relations image within the executive branch. This Court has noted

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cannot agree; the inherent value of historical buildings is "history" itself. When President Reagan left office in 1989, the actions of this city defrauded Petitioner the "right" to enjoy a unique and unprecedented element of goodwill forever. The courts shielded the city attorney; If petitioner's alleged attorney [Flynn] knew the facts and was allowed to be a witness, then logically, the city attorney Meloy, possessed vital information as to exactly what motivations prompted the hurried condemnation, (app:90-116) and the people in the background responsible. (app:71-73,100-105)

that there exists a "constant scrutiny of the press" and the "need" to maintain prestige as an element of Presidential influence." Nixon v Fitzgerald, 457 US 731 (1982)

President Grant, Mark Twain, Ralph Waldo Emerson, P.T. Barnum, and Tom Thumb, among others, were guests at this `first railroad hotel west of the Mississippi'. President Reagan lived there for over a year in 1930 (See "Where the Rest of Me? - The Ronald Reagan Story") His association with the building, and the landmark's ancient partiality, environmentally present for history, the stone and mortar witness [see Archeological and Historic Preservation Act, 36 CFR sec. 800.11 (b) (2) (iii)) to the rise of a President with the fortitude to involve his life into a

`new media'.[67]

National defense is of primary concern to the United States and in the courts carries significant deference precedentially. The Commander in Chief accrues his reputation from his personal history and through the media, it becomes known to the world, including adversary[68] foreign powers. (app:247,48)

Petitioner and his landmark are drawn into the `eye of the needle' through the circumstances of this case and the standing[69] is apparent; "...[c]laimant must

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[67] President Jackson was the first President to be photographed by daguerreotype, circa 1840, President Reagan the `Great Communicator' pioneered in the art of entertainment radio circa 1930.

[68] American citizens destroying Presidential legacy would not have played well at the Moscow summit in May of 1988.

[69] The Rock Island Arsenal and Chemical Weapons Command adjacent by RR

have a "personal stake in the outcome of the controversy...for illumination of difficult constitutional questions." Baker v Carr, 369 US 186 at 204 (1962) By the nature of the circumstances of this case it may be possible that the Executive Branch has taken notice of the controversy. (app:212,186-187,193,217) Petitioner and his family are unaware of

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easement to the Presidential landmark logically incurs scrutiny of adversary powers due to the nature of it's defense functions.

A threat to demolish or illegally obtain title to a Presidential Landmark carries within the act serious implications of incognizant defamation of the 'image' of a President. This may, as here, circumstantially involve the defense apparatus under his control. International awareness of an event such as this, is embarrassing to the Nation and could be contorted by adversary powers to import negative political public relations against Presidential prestige, and by virtue of the location of the landmark, distort a controversial political issue [chemical weapons] within the reporting of the international press.

any Executive Branch recognition, regarding anyone involved or that distinct probability and pose the question to the Judicial Branch; Is that material, if it exists, part of the record of this case?

Does the law require disclosure as to the nature of the recognition and the ultimate use[70] of the landmark?[71]

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[70] Iowa is currently by tradition the first caucus state in the election of Presidents; "...[w]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." Bell v Hood, 327 US 678,684, Bivens v Six Unknown Narcotics Agents, 403 US 388 (1971) IV Amendment

[71] This concept of 'national defense' cannot be deemed an end in itself, justifying any....power designed to promote such a goal. Implicit in the term 'national defense' is the notion of defending those values and ideas which set this Nation apart...It would indeed be ironic if, in the name of national defense, we would sanction the subversion of...those liberties...which [make] the defense of the Nation worthwhile." United States v Robel 389 US 258,264 see eg US

The doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency, but to exclude the exercise of arbitrary power. Meyers v United States, 272 US 52,292-93 (Brandeis dissenting)

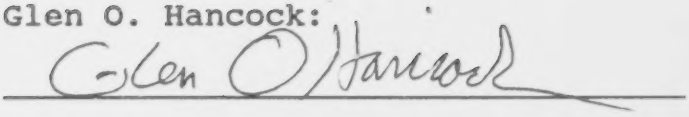
[G] WHEREFORE, Petitioner respectfully prays that a Writ of Certiorari be granted to review the judgment of the Supreme Court of Iowa in Hancock v City of Davenport, ___NW2d___(Iowa App 1988). [72] The repugnancy to the V and XIV Amend. continues as long as the city desires to tear down the historic Vale Hotel landmark

District Court v US 407 US at 332.

[72] In the event that the Petition is granted, Petitioner prays that the judgment be vacated, that cause be remanded to the State trial court, and that the court below be directed to grant a trial de novo of the compensation issue.

for a parking lot for its own project, or illegally confiscate title,(app.236-45) and the case is, therefore not moot.[73]

Glen O. Hancock:



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[73] The "[g]overment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. "see San Diego Gas supra at 650, is an "absolute" avoidance dicta promoting judicial legislation. Restricting Petitioner's "uses" is not a primary way of "preserving the public weal"; development was the essence of public benefit. Keystone Bituminous Coal v DeBenedictus, supra at 107 S.Ct. 1232, 1245.